	राजस्थान राजपत्र विशेषांक	RAJASTHAN GAZETTE Extraordinary
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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

निर्वाचन विभाग

अधिसूचना

जयपुर, जुलाई 08, 2020

संख्या एफ.9(1)(2)निर्वा./2019/2398:– भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/ राजस्थान – लो0स0 / (07/19) /2020 दिनांक 29 जून, 2020 मय माननीय राजस्थान उच्च न्यायालय, जोधपुर बैंच के निर्णय दिनांक 24 जनवरी, 2020 जिसमें (22) राजसमन्द लोकसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 07/2019 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

प्रवीण गुप्ता,
प्रमुख शासन सचिव।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

तारीख : 29 जून, 2020
8 आषाढ़, 1942 (शक)

अधिसूचना

सं0 82/राजस्थान–लो0स0/(07/19)/2020 : लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में भारत निर्वाचन आयोग की निर्वाचन अर्जी संख्या 07/2019 में राजस्थान उच्च न्यायालय, जोधपुर बेंच के तारीख 24 जनवरी, 2020 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

राहुल शर्मा,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA
NirvachanSadan, Ashoka Road, New Delhi - 110 001.

Dated: 29th June, 2020
8, Ashadha, 1942 (SAKA)

NOTIFICATION

No. 82/RJ-HP/(07/19)/2020/:- In pursuance of Section 106 of the Representation of People Act, 1951, (43 of 1951) the Election Commission of India

hereby publishes judgment/order dated 24.01.2020 of the Rajasthan High Court, Bench at Jodhpur in Election Petition No. 07 of 2019.

By order,

RAHUL SHARMA,
SECRETARY,
ELECTION COMMISSION OF INDIA.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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S.B. CIVIL (Election) PETITION NO. 07/2019

PETITIONER:

Jitendra Kumar S/o Nanu ram Ji Khatik (Independent), Aged About 43 Years, R/o Kumariyakheda, Post Namana, Tehsil Nathdwara, District Rajsamnad.(Rajasthan).

VERSUS

RESPONDENTS:

1. Smt. Diya Kumari (BJP) D/o Shri Bhawani Singh, R/o 944, City Palace , Near Jantar Mantar, Jaipur (Rajasthan), 302002
2. Devkinandan (Kaka) (INC) S/o Shri Raghunath Ji, B/c Gurjar, R/o Ashirwad Complex, Bing-B, Nathdwara, Tehsil Nathdwara, District Rajsamand. (Rajasthan)
3. Shri Bhanwar Lal Mali (Independent) S/o Shri Modi Ram Ji, B/c Mali, R/o Maru Darwaja, Near Shitla Mandir, Charbhuja Road, Amet, Tehsil Amet, Distirct Rajsamand (Rajasthan).
4. Chaina Ram (BSP) S/o Shri Bhika Ram, R/o Badayali, Village and Post Badayali, Teshil Merta, District Nagaur (Raj.)
5. Chandra Prakash (Ambedkarite Party of India) S/o Shri Bodu Ram Ji Tanwar, R/o Mahasingh Ka Bas, Post Kuhada, Tehsil Virat Nagar, District Jaipur (Rajasthan).
6. Bhanwar Lal Kumawat (Independents) S/o Shri Lakhma Ji, R/o Sunder Colony, Kankroli, Tehsil and District Rajsamand (Rajasthan).
7. Mishri Kathat (Indian Peoples Green Party), R/o Village Chhoti Roopnagar, Post Roop Nagar, Tehsil Beawar, District Ajmer (Rajasthan).
8. Neeru Ram Kapdi (Independent) S/o Hajari Ram Ji, R/o Kapdiwas, Post Merta Road, Tehsil Merta, District Nagaur,(Raj.).
9. Rakesh Samdolav (Independent) S/o Shri Bhavru Ram @ Bhanwar Lal Ji Choudhary, R/o Riyabadi, Jajdo Ka Bass, Samdolav Khurd, Bhawal, District Nagaur (Raj.).
10. Returning Officer (District Collector and District Magistrate) Parliament Area-22, Rajsamand, Tehsil & District Rajsamand (Raj.).

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IN THE MATTER OF SECTION 80 OF REPRESENTATIVE OF PEOPLE ACT, 1951 AND SECTION 125 OF THE REPRESENTATIVE OF THE PEOPLE ACT, 1951.

AND

IN THE MATTER OF PRINCIPLE OF NATURAL JUSTICE

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Election Petition No. 7/2019

Jitendra Kumar S/o Shri Nanuram Ji Khatik, Aged About 43 Years, R/o Kumariyakheda, Post Namana, Tehsil Nathdwara, District Rajsamand.(Raj.)

----Petitioner

Versus

1. Smt. Diya Kumari (BJP) D/o Shri Sawai Bhawani Singh, R/o - 944, City Palace, Jantar Mantar, Jaipur (Raj.) 302002
2. Devkinandan (Kaka) (INC) S/o Raghunath Ji, B/c Gurjar, R/o Ashirwad Complex, Bingh-B Nathdwara Tehsil Nathdwara, District Rajsamand. (Rajasthan)
3. Shri Bhanwar Lal Mali (Independent) S/o Shri Modi Ram Ji, B/c Mali, R/o Maru Darwaja, Near Shitla Mandir, Charbhuja Road, Amet, Tehsil Amet. Distirct Rajasmand (Rajashthan).
4. Chaina Ram (BSP) S/o Shri Bhika Ram, R/o Badayali, Village and Post Badayali, Teshil Merta, Distric Nagaur (Raj.)
5. Chandra Prakash (Ambedkarite Party of India) S/o Shri Bodu Ram Ji Tanwar, R/o Mahasingh Ka Bas, Post Kuhada, Tehsil Virat Nagar, Distric Jaipur (Rajashthan).
6. Bhanwar Lal Kumawat (Independents) S/o Shri Lakhma Ji, R/o Sunder Colony, Kankroli, Tehsil and District Rajasamand (Rajasthan).
7. Mishri Kathat (Indian Peoples Green Party), R/o Village Chhoti Roopnagar, Post Roop Nagar, Tehsil Beawar, Distric Ajmer.
8. Neeru Ram Kapdi (Independents) S/o Hajari Ram Ji, R/o Kapdiwas, Post Merta Road, Tehsil Merta, District Nagaur, (Raj.).
9. Rakesh Samdolav (Independents) S/o Shri Bhavru Ram @ Bhanwar Lal Ji Choudhary, R/o Riyabadi, Jajdo Ka Bass, Samdolav Khurd, Bhawal, District Nagaur (Raj.).
10. Returning Officer (District Collector and District Magistrate) Parliament Area-22, Rajasamand, Tehsil & District Rajasamand (Raj.)

----Respondent

For Petitioner(s) : Mr Jitendra Kumar, petitioner present in person

For Respondent(s) :

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order

24/01/2020

This Election Petition under Section 80 of Representation of the People Act, 1951 (hereinafter to be referred as 'the Act of 1951') is filed by the petitioner challenging the election of respondent No.1 – Diya Kumari as Member of Parliament from Parliamentary Constituency 22, Rajsamand, Rajasthan on the basis of grounds as stated in this petition.

The result of said election was declared on 23.05.2019 and the petitioner had presented this petition on 05.07.2019. The Registry pointed out certain defects including the defect that the petitioner has not deposited Rs.2000/- as security for the costs of petition as per Section 117 of the Act of 1951. On 28.08.2019, the petitioner deposited Rs.2000/- through e-Court Fee Receipt.

Section 117 of the Act of 1951 reads as follows:

> "**117. Security for costs.**--(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.
> (2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct."

As per the above, an election petitioner has to deposit a sum of Rs.2000/- as security for the costs of the petition at the time of presentation of election petition.

Sub-section (1) of Section 86 of the Act of 1951 reads s under:

> "**86. Trial of election petitions.--**(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

The petitioner submitted an explanation on 04.12.2019 claiming that he had deposited the security for the costs of Rs.2000/- when the time was granted to him to remove the defects and, therefore, the defect pointed by the Registry of this effect may be overruled.

The admitted position is this that at the time of presentation of this election petition, security for the costs of the petition of Rs.2000/- was not deposited and the same was deposited on a later date.

The Hon'ble Supreme Court in ***Charan Lal Sahu vs Nandkishore Bhatt and Ors., AIR 1973 SC 2464*** has held as under:

> "3. The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. this Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

In N.P. Ponnuswami v. Returning Officer, Namekkal Constituency and Ors. it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

5…...

6. We are clearly of the view that the non-deposit of the security along with the election petition as required under Section 117 of the Act leaves no option to the Court but to reject it.The appeal is accordingly dismissed with costs."

[Emphasis supplied]

Relying on the above referred judgment, the Hon'ble Supreme Court in ***Aeltemesh Rein vs. Chandulal Chandrakar & Ors., AIR 1981 SC 1199***, has held as under:

"The only question which survives is as to what is the consequence of non-compliance with Section 117 of the Act. That question has been settled by the decision of this Court in Charan Lal Sahu v. Nand Kishore Bhatt and Ors. wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided ins. 117 of the Act. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. In that view of the matter, the High Court was right in dismissing the election petition summarily.

In ***M. Karunanidhi vs. H.V. Hande and Ors., AIR 1983 SC 558***, the Hon'ble Supreme Court has held as under:

"The submissions advanced by learned Counsel for the appellant cannot be accepted as they proceed on the assumption that no distinction can be drawn between the requirement as to the making of a deposit in the High Court under Sub-section (1) of Section 117 and the manner of making such deposit. There was considerable emphasis laid by learned Counsel that Sub-section (1) of Section 117 cannot be dissected into two parts, one part being treated as mandatory and the other as directory. The contention is wholly misconceived and indeed runs counter to several decisions of this Court. It

is always important to bear the distinction between the mandatory and directory provisions of a statute. Sub-section (1) of Section 117 is in two parts. The first part of Sub-section (1) of Section 117 provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs. 2000/- as security for the costs of the petition, and the second is that such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of a security deposit of Rs. 2000/- in the High Court is mandatory, the non-compliance of which must entail dismissal in limine of the election petition under Sub-section (1) of Section 86 of the Act."

The petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in ***M.Y.Ghorpade vs. Shivaji Rao M. Poal & Ors., AIR 2002 SC 3105*** and argued that Section 117(1) of the Act of 1951 is not mandatory and is directory only, hence, the petition cannot be dismissed on the ground that the security for the cost of the petition was not deposited along with the election petition.

Having gone through the above decision, I am of the view that this decision does not help to the petitioner because in this decision, the Hon'ble Supreme Court in para 9 has held as under:

"9…….It is not necessary to multiply authorities on the point, but suffice it to say, that the sum of Rs.2,000/- must be deposited while filing an Election Petition and that is undoubtedly mandatory, but through whom the amount will be deposited etc. cannot be held to be mandatory."

As per the above, the condition of depositing security for the cost of election petition at the time of presentation of the election petition is mandatory, however, the procedure for depositing the same is directory.

From the above authoritative pronouncements of the Hon'ble Supreme Court, it is well settled that if the security for the costs of an election petition is not deposited at the time of its presentation before the High Court, the only option left with the Court is to dismiss the election petition.

The deposit of security for the costs of the election petition by the petitioner on a later date does not help him in any manner because it is well settled that challenging of an election by way of an election petition is governed by those rules, which the statute makes and applies. Common law and equity have no applicability in these matters. The election process commencing from the issuance of notification to elect a Member for the Parliament or any Legislative Constituency including an election dispute is regulated by the provisions of Act of 1951. Under the scheme of Act of 1951, there is no provision to relax the condition of depositing the security costs at the time of presentation of the election petition.

The Hon'ble Supreme Court in ***Jyoti Basu & Ors. Debi Ghosal & Ors., AIR 1982 SC 983*** held as under:

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those

rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self- contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act says?"

The aforesaid principle has been followed by Hon'ble Supreme Court in ***Pramod Laxman Gudadhe vs. Election Commission of India & Ors., AIR 2018 SC 2356*** and in ***Nitin Bandopant Salagre & Ors., AIR 2019 SC 4980.*** The said principle has also been followed by this Court in ***Devi Lal Khant vs. State & Ors., 2015(1) RLW 312 (Raj.).***

Net result of the above discussion is that this election petition is dismissed on account of non-deposit of security for the costs of the election petition at the time of presentation of the same before this Court.

The substance of this decision shall be intimated to the Speaker of the Parliament as well as the Election Commission forthwith. A copy of this judgment shall be sent to the Election Commission as provided under Section 103 of the Act of 1951.

(VIJAY BISHNOI),J

masif/-PS

By order,

RAHUL SHARMA,
SECRETARY,
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर।